individuals did not come from one specific country. They were a fanatic, ideological enemy with international reach. They could be anywhere. And they had the money to finance their terrorist activities.

It was during these early months that the administration explored what its options were and how they should act in confronting this unique enemy, one that fought not in uniforms on battlefields, not for a particular nation but in blue jeans and American civies.

Some are claiming that the President relied on the Bybee memo in formulating his policy with respect to interrogation techniques at Abu Ghraib. Let's take a look at these documents. First, the so-called Bybee memorandum was not written by Judge Gonzales, in spite of the implications by some. It was written by Jay Bybee who, at that time, was the Assistant Attorney General of the Office of Legal Counsel at the Department of Justice, and is now a distinguished judge on the Circuit Court of Appeals for the Ninth Circuit. That is why some people call it the Bybee memo. They could not call it the Gonzales memo. It is not the Gonzales memo, has never been the Gonzales memo.

The memo is dated August 1, 2002. Remember that date. The memo addresses the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It does not analyze the Geneva Convention. Let me just mention that this is a scholarly piece of analysis. Regardless of whether you agree or disagree with its legal conclusion, there can be little doubt that this 50-page, single-spaced document with 26 footnotes is a thoughtful and thorough analysis.

Let me also say that this memo does not tell the President to use torture in Iraq. Rather it tries to define what torture is from a purely legal perspective.

Let's compare the Bybee memo with the President's actual memorandum on the treatment of detainees. The subject of this memo is the humane treatment of al-Qaida and Taliban detainees. The President's memo was written on February 7, 2002. This is 6 months before the Bybee memorandum. So there is absolutely no way the President could have relied on the August 1, 2002, Bybee memo because it did not exist at the time he issued his definitive February 7 directive, the one that he and others followed.

Let me be clear: I am not saying the Justice Department never considered the Convention Against Torture prior to August 1, 2002. In fact, given the voluminous length of the analysis, it probably took some time to write. But to suggest this Bybee memo, which addresses a different statute, a statute that is nowhere mentioned in the President's memorandum, was indispensable in crafting the President's decision is simply false for the simple reason it did not exist at the time.

What some of my Democratic colleagues are trying to do is hold Judge Gonzales responsible for a memorandum he did not write and that came from the Justice Department which he did not direct.

The Bybee memo asks an important question: What is torture? This is a critical question to ask in the middle of a war on terror in which our enemies have made it clear that they will not observe the Geneva Conventions or any other rule of civilized conduct. Judge Gonzales received the Bybee memo, but some of my friends across the aisle are almost suggesting that he actually wrote it. He did not. He had nothing to do with it. In fact, they criticize him because they believe he did not object to the memo at the time he received it. But the fact is, we do not know what his private legal advice was to the President on the Bybee memo because that advice is privileged advice. And Presidents do not want their counsel divulging privileged advice.

In fact, we should think twice before we ever proceed down the path of attempting to require the White House Counsel to divulge to the Congress in an open hearing precisely what legal advice he gave to the President on an inherently sensitive matter such as those that directly relate to national security.

When all is said and done, Judge Gonzales did not supervise Jay Bybee. He did not supervise Attorney General Ashcroft. It was not his job as White House Counsel to approve of memos written by the Justice Department. And that memo of February 7 said the detainees should be treated humanely. That was the President's position.

I have a lot more I want to say about this, but I notice the distinguished Senator from New York is here and wanted to say a few words before we break for lunch. I will interrupt my remarks. I couldn't interrupt a few minutes earlier. I will come back to this subject.

I hope the Chair will allow the senior Senator from New York to have a few extra minutes. I would be happy to sit in the chair, if needed. But I will relinquish the floor and ask unanimous consent if I can finish my remarks after the luncheon; is that possible?

Mr. SPECTER. Mr. President, we have consent following the lunch. I think the Senator from——

Mr. HATCH. Immediately after the consent order.

Mr. SPECTER. The Senator is entitled to finish.

Mr. HATCH. Especially being interrupted and accommodating colleagues on the other side. I would like to finish.

Mr. SPECTER. There had been a request for Senator MIKULSKI for 10 minutes right after lunch.

Mr. LEAHY. Yes, at 2:15. We don't have to break at 12:30. We could continue on. I was off the floor. What was the request?

Mr. SCHUMER. Will my colleague yield for a minute?

Mr. LEAHY. I don't have the floor.

Mr. SPECTER. Mr. President, will the Senator from Utah be willing to await the completion of the remarks of Senator MIKULSKI for 10 minutes at 2:15 and Senator SCHUMER at 2:15 and then he will resume his remarks?

Mr. HATCH. Following Senator MIKULSKI?

Mr. LEAHY. If the Senator will withhold, how much longer does the Senator from Utah have?

Mr. HATCH. I have a little bit more. It could be as long as a half hour.

Mr. SPECTER. My unanimous consent request is that at 2:15, when we resume, Senator MIKULSKI be recognized for 10 minutes and Senator SCHUMER be recognized for 10 minutes and then Senator HATCH be recognized to conclude his remarks, then Senator CORNYN be recognized, and then Senator KENNEDY be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object, it would be Senators SCHUMER, HATCH, CORNYN, and KENNEDY?

Mr. SPECTER. It would be Senators MIKULSKI, SCHUMER, HATCH, CORNYN, and KENNEDY.

Mr. LEAHY. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. I thank the Chair.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will recess until 2:15 p.m.

There being no objection, the Senate, at 12:30 p.m., recessed until 2:14 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

EXECUTIVE SESSION

NOMINATION OF ALBERTO R. GONZALES TO BE ATTORNEY GENERAL—CONTINUED

The PRESIDING OFFICER. Under the order of recognition, Senator MIKULSKI is recognized for 10 minutes, Senator SCHUMER for 10 minutes, followed by Senator HATCH, Senator CORNYN, and Senator KENNEDY, with no time limit agreed to for Senator HATCH, Senator CORNYN, and Senator KENNEDY.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the agreement is to have Senator MIKULSKI recognized for 10 minutes and Senator SCHUMER for 10 minutes. There is no time set when Senator HATCH resumes, and then Senator CORNYN is in line, and then Senator KENNEDY is in line. It is my hope we will be able to get a consent agreement for the full debate time early this afternoon when that appears to be appropriate.

Senator MIKULSKI, under the unanimous consent agreement, now has 10 minutes.

The PRESIDING OFFICER. The Senator from Maryland.